UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CHINESE AUTOMOBILE DISTRIBUTORS
OF AMERICA, LLC,
Plaintiff,

v.

MALCOLM BRICKLIN, ET.AL.,
Defendants.

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07 Civ. 4113 (LLS)

DEFENDANTS' REPLY TO PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS

Respectfully submitted,

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PRELIMINARY STATEMENT

Chinese Automobile Distributors of America, LLC (CADA) Memorandum in Opposition to Defendants'[1] Motion to Dismiss focuses solely on the issue of Count 3 of the Complaint, which attempts to raise claims under the Private Securities Litigation Reform Act of 1995 ("PSLRA"), 15 USC § 78aa, (17 C.F.R. § 240.10b-5). It is undisputed that Count 3 of the Complaint is the only Count that raises a "federal question," and that the remaining counts of the Complaint raise only state law issues. Jurisdiction in this case is based solely on "federal question" jurisdiction, and not diversity of jurisdiction. (See Paragraphs 10-11 of Plaintiff's Complaint). Accordingly, in the event that Count 3 of the Complaint fails to state a valid cause of action, the entire Complaint must be dismissed for want of jurisdiction, since the remaining State Law Claims do not vest this Court with subject matter jurisdiction. (See: Plaintiff's Memorandum in Opposition to Motion to Dismiss at page 4).

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[1] The "Defendants" referred to herein, are Malcolm Bricklin, Jonathan Bricklin, Barbara Bricklin Jonas, Michael Jonas, Sania Teymeny (collectively "Individual Defendants") and Visionary Vehicles, LLC ("VV"). Reference to "Bricklin" herein shall mean the Defendant Malcolm Bricklin.

ARGUMENT

A. THE PLAINTIFF'S COMPLAINT FAILS TO MEET THE HEIGHTENED PLEADING STANDARD REQUIRED UNDER THE PSLRA.

Plaintiff's Memorandum fails to establish the heightened pleading standard necessary to state a valid claim under the PSLRA. Plaintiff's Complaint relies solely upon "information and belief" as to the alleged relevant facts in support of their claim under the PSLRA. (See: e.g. Paragraphs 26, 29 and 37 of Plaintiff's Complaint). Claims that are based merely upon the Plaintiff's "information and belief" are subjected to an even higher pleading standard than claims based upon relevant "facts" under the PSLRA.

Since the Plaintiff's claims are based loosely upon "information and belief," it must allege ***positively particular facts*** upon which it bases its information and belief that defendants committed securities fraud. The Complaint falls way short of meeting this extremely stringent pleading requirement. *Feeney v. Mego Mortgage Comp.* 45 F. Supp.2d 1356 (N.D. Ga 1999).

Plaintiff relies heavily upon the case of *Leykin v. AT&T Corp.,* 423 F. Supp 2d 229, 237-238 (S.D.N.Y. 2006) in its Memorandum; an opinion authored by this Honorable Court, to support its proposition that the Complaint alleges sufficient "facts" necessary to withstand dismissal under Rule 12(b)(6), Fed.R.Civ.P. Unfortunately for the Plaintiff, the *Leykin* case supports dismissal of the case at bar. In *Leykin*, this Court dismissed the Plaintiff's claims under the PSLRA, without leave to replead, for almost identical reasons argued in the case *sub judice.*

In *Leykin*, this Court dismissed the Complaint without leave to replead and held: "In sum, Plaintiff's claims based on the AT&T defendants' scheme itself are dismissed as representing [purely state law] charges of corporate mismanagement and abuse rather than of securities fraud." *Leykin, supra* at 242.

This Court's ruling in *Leykin* is the foundation upon which this Court is justified in dismissing the Plaintiff's Complaint. The claims raised by the Plaintiff in this case are clearly based upon state law issues, which fall far short of what this Court requires to satisfy the stringent pleading requirements under the PSLRA.

B. PLAINTIFF'S COMPLAINT DOES NOT ALLEGE A CAUSE OF ACTION UNDER THE PSLRA.

Plaintiff's claims, even when viewed in a light most favorable to them, amount to nothing more than questionable State Law Claims of mismanagement, breach of fiduciary duty, corporate abuse and diversion with respect to claims which have nothing to do with the purchase or sale of securities. In essence, the gist of the Plaintiff's claims are that the Individual Defendants used VV for their own interests rather than the company's, by diverting company assets to themselves. "[C]ourts repeatedly have found that allegations constituting nothing more than assertions of general mismanagement, or nondisclosures of mismanagement, cannot support claims under *§ 10(b)* of the Exchange Act". *Portannese v. Donna Karan Int'l, Inc.*, No. 97 Civ. 2011 (CBA), 1998 WL 637547, (E.D.N.Y. Aug. 14, 1998); cf. *Suez Equity Investors, L.P. v. Toronto-Dominion Bank,* 250 F.3d 87, 99 (2d Cir. 2001)("Post-stock-purchase corporate mismanagement or breach of fiduciary duty may be just as reprehensible as a misleading statement regarding the value of a security to be sold, but the former is not proscribed by *§ 10(b)*, while the latter is actionable."); *Arduini/Messina P'ship v. Nat'l Med. Fin. Serv. Corp.,* 74 F. Supp. 2d 352, 362 (S.D.N.Y. 1999) (allegations of corporate mismanagement and breach of fiduciary duties might support a derivative claim but cannot provide the basis for a securities fraud claim).

In *Mutual Shares Corp. v. Genesco, Inc.*, 384 F.2d 540 (2d Cir. 1967), the Court of Appeals dismissed a claim similar to the claims alleged in this case. Minority shareholders claimed, among other things, that the majority shareholders ran the company in their own interests rather than the company's, by diverting company assets to themselves. *Id.* at 542. The court held that those allegations "are primarily corporate abuse and diversion, claims cognizable under state law but not under the [Exchange] Act." *Id.* at 546. As in *Mutual Shares*, the scheme alleged here involved corporate abuse, misconduct and diversion of assets, but not transactions in the relevant securities. The conclusion reached by the Court in *Mutual Shares* was followed by this Honorable Court in its decision in *Leykin v. AT&T Corp.,* 423 F. Supp. 2d 229, 2006 U.S. Dist. LEXIS 12824 (S.D.N.Y. 2006).

The ruling in *Mutual Shares* and the decision in *Leykin* compel this Honorable Court to reach the same conclusion. In the case at bar, Plaintiff's claim that the Individual Defendants allegedly looted VV (See: Plaintiff's Complaint at Paragraphs 22(b), 26) at the Plaintiff's expense. These claims some day may rise to the level of actionable conduct under state law, but they certainly do not justify invoking this Court's jurisdiction for securities violations under *§ 10(b)* of the Exchange Act.

The PSLRA requires that a Complaint alleging misleading statements or omissions under *Section 10(b)* (*17 C.F.R. § 240.10b-5*) must specify each statement alleged to have been misleading, the reason or reasons why the statement is misleading, and, if an allegation regarding the statement or omission is made on information and belief, the complaint shall state with particularity all facts on which that belief is formed." *15 U.S.C. § 78u-4(b)(1).* Similarly, *Federal Rule of Civil Procedure 9(b)* requires that a complaint alleging fraud to: "(1) specify the statements that the plaintiff contends were fraudulent, (2) identify the speaker, (3) state where and when the statements were made, and (4) explain why the statements were fraudulent." *Mills v. Polar Molecular Corp.*, 12 F.3d 1170, 1175 (2d Cir. 1993).

To make a claim under those provisions, Plaintiff must allege: "(1) they were injured; (2) in connection with the purchase or sale of securities; (3) by relying on a market for securities; (4) controlled or artificially affected by defendant's deceptive or manipulative conduct; and (5) the defendants engaged in the manipulative conduct with scienter." *In re Initial Public Offering Sec. Litig.*, 241 F. Supp. 2d 281, 385 (S.D.N.Y. 2003).

Plaintiff's Complaint is devoid of specificity. The Complaint fails to allege with specificity any dates that any of the alleged misrepresentations occurred; fails to allege with specificity whether these statements were written or verbal; fails to allege with specificity who was present when these statements were allegedly made; fails to allege with specificity that the allegedly inappropriate statements were the direct cause of the Plaintiff's damages; and fails to allege with specificity that these alleged statements were known to be false when made. The Complaint even fails to allege with specificity the number of shares of stock that the Plaintiff was alleged to have received in connection with its second investment. (See: Paragraph 21 of Plaintiff's Complaint). Additionally, the Plaintiff isn't even sure how many shares or "units" it purchased when it made the initial investment. (See: Paragraph 18 of Plaintiff's Complaint). There is no allegation that the sale of these "units" constituted a sale of "securities" as defined by the PSLRA.

Not all conduct that negatively affects a company is actionable as a federal securities fraud. The scheme to defraud must coincide with the sale of securities. *SEC v. Zandford,* 535 U.S. 813, 822, 122 S. Ct. 1899, 1904, 153 L. Ed. 2d 1 (2002). In other words, the fraud itself must be "integral to the purchase and sale of the securities in question." *Pross v. Katz,* 784 F.2d 455, 459 (2d Cir.

1986), quoted in *Dabit v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 395 F.3d 25, 37 (2d Cir. 2005), rev'd on other grounds, No. 04-1371, 126 S. Ct. 1503, 164 L. Ed. 2d 179, 2006 U.S. LEXIS 2497 (U.S. March 21, 2006). Conduct that is merely incidental or tangentially related to the sale of securities will not meet the "in connection with" requirement. *Ling v. Deutsche Bank, AG, No. 04 Civ. 4566 (HB),* 2005 U.S. Dist. LEXIS 9998, at (S.D.N.Y. May 26, 2005).

In *Osher v. JNI Corp*, 302 F. Supp.2d 1145 (S.D. Cal. 2003), the Court held that stock purchasers failed to meet the PSLRA pleading requirements where they had not alleged sufficient facts to demonstrate that any of quoted statements were false or misleading, and where they had not alleged sufficient facts to raise strong inference that corporate officials made statements with actual knowledge or with deliberate recklessness that they were false or misleading; without such corroborating details, the complaint amounted to nothing more than allegations of "**fraud by hindsight**," which were exactly what PSLRA was designed to prevent.

For example, Plaintiff alleges that Bricklin represented that "the joint venture [with Chery] was positioned to move forward with its business plans." (See: Complaint at Paragraph 20(a)). In addition to not providing any details of who, what, when and where, the Plaintiff's claims certainly cannot rise to the level of material misrepresentations. Even assuming *arguendo* that the statement was false, the vague claim that the joint venture was "moving forward," amounts to no more than puffery or misguided optimism, which should be obvious to a reasonable investor and not actionable wrongdoing under the PSLRA.

Another example is Plaintiff's claim that VV had $50 million in commitments. (See: Complaint at Paragraph 22a). Again, there is no specificity to the allegations. More importantly, the term "commitment" in and of itself is a term that lends itself to sheer speculation and optimism and is nothing more than puffery, which again would be obvious to a reasonable investor. In the similar case of *Plotkin v. Ipaxess Inc.*, 407 F.3rd 690 (5th Cir. 2005), where the subheading of a corporation's press release stated that agreements were in place with major customers for commercial shipments, and stock purchasers alleged that the corporation had no binding sales agreements with customers, the Court held that the stock purchasers failed to show any false or misleading statement in the release. In the instant case, the term "commitment" is even less definitive than the term agreement. Consequently, *Plotkin* compels dismissal of this case for the reasons recited herein. See also: *Gaylin v. 3 Com Corp.*, 185 F. Supp.2d 1054 (N.D. Cal. 2000) (where the Court held that allegations that corporate executives must have known of the falsity of the statements they made because of their positions in the corporation, were insufficient to satisfy the requirement of 15 USCS § 78u-4(b)(2) to plead specific facts showing scienter).

Plaintiff also clusters all the Defendants together and does not specifically identify which Defendant is responsible for each and every statement which it claims to be false, which renders the Complaint defective. See: *In re Cardinal Health Sec. Lit*, 426 F. Supp.2d 688 (S.D. Ohio 2006) (where the Court held that the Plaintiffs' allegations lumped all individual defendants (executives of corporation) together, stating that their positions as high-level executives show that they must have misled investors as to corporation's financial health; plaintiffs' efforts to cite particular corporate press releases and statements that supported these conclusory allegations did not raise their allegations to heightened level of specificity required by PSLRA).

Again, even if viewed in a light most favorable to the Plaintiff, its claim is far too nebulous to satisfy the heightened pleading standard required under under *§ 10(b)* of the Exchange Act. The Plaintiff's Complaint falls short of identifying the "who, what, where and when" relating to the actions complained of. Consequently, the Complaint is subject to dismissal. See e.g., *In Re Alcatel Securities Litigation*, 382 F. Supp. 2d 513 (S.D.N.Y. 2005)(which held that Investors failed to sufficiently plead claims under 15 USCS § 78j(b) and SEC Rule 10b-5, because a laundry list of various statements followed by a list of "specific" reasons why the statements were false were insufficient where statements were not linked with reasons; thus, claims did not meet the requirements of PSLRA).

All private plaintiffs asserting securities fraud claims under *Section 10(b)* or *Rule 10b-5* "must prove that the defendant's fraud caused an economic loss." *Dura Pharmaceuticals, Inc. v. Broudo,* 544 U.S. 336, 125 S. Ct. 1627, 1629, 161 L. Ed. 2d 577 (2005). The common law loss causation requirement was codified in the PSLRA: "In any private action arising under this chapter, the plaintiff shall have the burden of proving that the act or omission of the defendant alleged to violate this chapter caused the loss for which the plaintiff seeks to recover damages." *15 U.S.C. § 78u-4(b)(4).*

Plaintiff's Complaint abjectly fails to conform with the stringent pleading requirements stated above, and for this reason the Complaint must be dismissed.

C. PLAINTIFF'S COMPLAINT FAILS TO ALLEGE CAUSATION OR SCIENTER.

A review of the Plaintiff's Complaint at Count 3, Paragraphs 36-40, discloses that the Plaintiff omits any allegations relating to causation or scienter, both elements being essential to any claim under the PSLRA. As a matter of fact, the Plaintiff even fails to allege any damages directly relating to its alleged interest in "units" of VV. Rather, the only injury alleged in the Complaint is that the Plaintiff's $4,000,000 "investment" is now "worthless." (See: Paragraph 27 of Plaintiff's Complaint). Plaintiff's Complaint cannot establish causation or scienter as a matter of law. The ambiguous facts alleged by the Plaintiff cannot establish loss causation as a matter of law. Respectfully, Defendants' suggest Plaintiff is dissatisfied with the fact that it may have lost its investment, and nothing more. Not every investment loss rises to the level of actionable conduct under the PSLRA.

The causation element of *Rule 10b-5* has two separate components: "a plaintiff must allege both transaction causation, i.e., that *but for* the fraudulent statement or omission, the plaintiff would not have entered into the transaction; and loss causation, i.e., that the subject of the fraudulent statement or omission was the cause of the actual loss suffered." *Suez Equity Investors, L.P. v. Toronto-Dominion Bank,* 250 F.3d 87, 95 (2d Cir. 2001).

In the instant case, the Complaint is devoid of any "*but for*" allegations, not to mention the facts necessary to establish causation. Moreover, the Complaint is devoid of allegations that the statements allegedly made by Bricklin were false. For example, there is no allegation that Bricklin's statements regarding lack of funds to make payroll were false. (See: Paragraph 20(c) of Plaintiff's Complaint).

Plaintiff must show that Bricklin's fraud caused its losses because the securities statutes make private securities fraud actions available "not to provide investors with broad insurance against market losses, but to protect them against those economic losses that misrepresentations actually cause." *Dura, 125 S. Ct. at 1633*; cf. *Castellano v. Young & Rubicam, Inc.,* 257 F.3d 171, 186 (2d Cir. 2001) ("The loss causation requirement is intended to 'fix a legal limit on a person's responsibility, even for wrongful acts.'"), quoting *First Nationwide Bank v. Gelt Funding Corp.*, 27 F.3d 763, 769 (2d Cir. 1994).

"Put another way, a misstatement or omission is the 'proximate cause' of an investment loss if the risk that caused the loss was within the zone of risk *concealed* by the misrepresentations and omissions alleged by a disappointed investor." *Leykin*, supra at 239-240.

Thus, the first step in analyzing whether a complaint alleging securities fraud adequately pleads loss causation is to identify the subject of the misrepresentations or omission that allegedly caused plaintiff's loss, *i.e.,* the risk concealed by defendant's fraud. See *Liu v. Credit Suisse First Boston Corp. (In re Initial Pub. Offering Secs. Litig.),* 399 F. Supp. 2d 298, 307 (S.D.N.Y. 2005) ("It is vital to understand the nature of the risks that plaintiffs in the instant action allege were concealed."). Plaintiff has completely failed to allege any facts identifying any risk concealed by the Defendants. As a matter of fact, the disclosures made by the Bricklin, i.e., that the Company was without sufficient funds to make payroll (See: Paragraph 20(c) of Plaintiff's Complaint), would put any reasonable investor on notice of the extreme risk of its investment.

The second step is to determine whether the complaint alleges that the concealed risk led to plaintiff's loss. "If that relationship is sufficiently direct, loss causation is established, but if the connection is attenuated, or if the plaintiff fails to demonstrate a causal connection between the content of the alleged misstatements or omissions and the harm actually suffered, a fraud claim will not lie." *Lentell v. Merrill Lynch & Co., Inc.,* 396 F.3d 161, 172, 174 (2d Cir. 2005), cert. denied, U.S., 126 S. Ct. 421, 163 L. Ed. 2d 321 (2005)(internal quotations and citations omitted). Plaintiff has not alleged any concealment. As a matter of fact, Plaintiff alleges that the books, journal, general ledgers and records of the Company clearly disclosed all of the information that the Plaintiff, in hindsight, is now claiming was fraudulent. (See: Paragraph 26 of the Plaintiff's Complaint).

Plaintiff's Complaint is replete with allegations that the Plaintiff knew in advance that VV was on questionable financial footing, and that any investment would, by its very nature, be extremely risky. Arguably Plaintiff's Complaint may some day withstand dismissal based upon alleged State Law Claims for corporate mismanagement and abuse, but not for securities fraud under the PSLRA. Clearly, the PSLRA was not created to protect this Plaintiff or this type of transaction, and the Complaint should accordingly be dismissed.

Plaintiff's Complaint cannot establish causation as a matter of law. Plaintiff alleges that Bricklin represented that "the joint venture [with Chery] was positioned to move forward with its business plans." Another example is Plaintiff's claim that VV had $50 million in commitments. (See: Complaint at Paragraph 22a). Again, these statements, in and of themselves, are terms that lend themselves to sheer speculation and optimism and are nothing more than forward looking opinions or puffery, which again would be obvious to a reasonable investor, and are not actionable under the securities law.

D. STATEMENTS OF OPINION, PUFFERY OR FORWARD LOOKING STATEMENTS ARE NOT ACTIONABLE.

Plaintiff's claims amount to nothing more than opinions and puffery, or forward looking statements of Bricklin which are not actionable. These types of statements are subject to dismissal as a matter of law. *Sandmire v. Alliant Energy Corp.,* 296 F. Supp 2d 950 (S.D. Wis. 2003). The type of comments claimed by Plaintiff are mere projections such that the application of the "safe harbor" provisions under 15 USCS § 78u-5(c)(1)(B) would bar any recovery and require dismissal of the Complaint. See also: *Friedman v. Rayovac Corp*, 291 F. Supp 2d 845 (S.D. Wis. 2003)(Where the District court granted motion to dismiss filed by the corporation and its principals because the investors' allegations that the corporation and its principals made misrepresentations in forward looking statements failed to give rise to a strong implication of scienter with respect to any of alleged misrepresentations).

In *In Re Federal Mogul Sec. Lit.*, 166 F. Supp 2d 559 (E.D. Mich. 2001) the Court held that an automotive parts conglomerate, sued by shareholders, was entitled to the statutory "safe harbor" protection for "forward-looking statements" under 15 USCS § 78u-5(c)(1), where the alleged misrepresentations and omissions speak of projections, statements of plans and objectives, and estimates of future economic performance. Plaintiff points to many statements couched in the present tense, statements such as "consolidation continues as planned" and "management is proceeding with integration;" while in present tense, these alleged statements are inherently forward-looking.

Even if the Company fails to use cautionary language, the safe harbor provisions are still applicable to the forward looking statements alleged to have been made in this case. See: *In Re Lockheed Martin Sec. Lit.*, 272 F. Supp 2d 944 (S.D. Cal. 2003).

E. This Court should not exercise jurisdiction over the Plaintiff's State Law Claims.

In the case at bar, the Plaintiff attempts to use its single spurious Federal Claim at Count 3 of the Complaint to justify this Court's supplemental jurisdiction over purely state court claims. This Honorable Court should decline to exercise supplemental jurisdiction over Plaintiff's State Law Claims (Counts 1,2, 4 and 5) where, among other circumstances, State Law Claims "substantially predominate" over Plaintiff's sole Federal Claim. (See: Plaintiff's Mem. at 4-5).

The case upon which Plaintiff relies in support of its claim for jurisdiction over the Plaintiff's State Law Claims, actually supports dismissal in this case, *SST Global Technology, LLC v.*

Chapman, 270 F. Supp. 2d 444 (S.D.N.Y. 2003), (See: Plaintiff's Mem. at 5-7). Although Plaintiff contends that *SST Global* is "factually analogous" to the present case, id., the plaintiff there alleged that each defendant violated the Securities and Exchange Act of 1934, and as a result, the Federal Court had original jurisdiction over *each* defendant. In the instant case, the Plaintiff does not contend that each and every Defendant violated the Act. As a matter of fact, the Plaintiff's single Federal Claim at Count 3 allegedly implicates only two of the six Defendants named in this case. Plaintiff does not allege in its Complaint, that the other four Individual Defendants' conduct related to the alleged misrepresentations upon which the only Federal Claim against Mr. Bricklin and VV is based.

Equally critical in determining whether to exercise supplemental jurisdiction over the plaintiff's State Law Claims, the *SST Global* court cited *Freer v. Mayer*, 796 F. Supp. 89, 94 (S.D.N.Y. 1992), for the proposition that corporate waste and breach of fiduciary duty claims are "fundamental issues of state law." It is important to emphasize the fact that the Plaintiff here, but not in *SST*, asserts corporate waste claims, which are purely State Law Claims. This important distinction justifies this Court's rejection of jurisdiction over the Plaintiff's State Court Claims in this case.

The *SST Global* court also relied upon *Nelson v. Stahl*, 173 F. Supp. 2d 153 (S.D.N.Y. 2001), where the court retained supplemental jurisdiction over certain state law claims and declined to exercise supplemental jurisdiction over other state law claims relating to the dismissed federal claims, despite having sustained federal claims against all the defendants. In declining to retain supplemental jurisdiction over certain state law claims, the *Nelson* court reasoned that the dismissed state law claims did not arise from the same "nucleus of operative facts" as the surviving federal securities claims; they involved issues of fact and law "far more wide-ranging" than the federal claims; they concerned a ***larger group of persons*** than those implicated by the federal claims; and the proof required to decide the state law claims would be "much different from, and to a significant extent broader than, that required for resolution of the federal claims." Id., 173 F. Supp. 2d at 170 (citation omitted); see *SST Global*, 173 F. Supp. 2d at 457.

The case at bar is similar to *Nelson*, supra, in that the Plaintiff's State Law Claims of corporate waste, misappropriation of corporate assets, and breach of fiduciary duty are not only "fundamental issues of state law[,]" see *Freer*, 796 F. Supp. at 94, but will require vastly more judicial resources to adjudicate, and private resources to litigate, than would the sole Federal Securities Law Claim at Count 3 of the Complaint. See *Diven v. Amalgamated Transit Union Int'l & Local 689*, 38 F.3d 598, 601 (D.C. Cir. 1994) (noting that the expenditure of more judicial resources to adjudicate state law claims over federal claims is a factor that courts should consider); *Nelson*, 173 F. Supp. 2d at 170. As in the *Nelson* case, the issues involved in Plaintiff's State Law Claims, particularly corporate waste, misappropriation, and breach of fiduciary duty, are "far more wide-ranging" than Plaintiff's Federal Claim and the proof required to adjudicate those claims would be entirely different from, and broader than, that required to resolve the Federal Claim.

Additionally, the Plaintiff's State Law Claims concern four more Defendants than the two Defendants implicated by the single Federal Securities Claim at Count 3 of the Plaintiff's Complaint.

Plaintiff erroneously contends that "to decline jurisdiction would require the parties to segregate and litigate the same issues in different courts . . . subjecting the litigants to the possibility of contradictory findings." (See: Plaintiff's Mem. at 7). To the contrary, if the Court were to exercise supplemental jurisdiction over Plaintiff's State Law Claims, it would unfairly require the other four Individual Defendants to participate in a Federal lawsuit in which they are not alleged to have violated any Federal Law. This is in stark contrast to *SST Global*, where the court had original jurisdiction over all defendants. See *SST Global*, 270 F. Supp. 2d at 455-456.

Moreover, the interests of judicial economy will not be served if the more fact-intensive state law claims, particularly corporate waste and misappropriation of corporate assets, are heard by the Court. Nor is there any risk of "contradictory findings" by a state court because liability for the state and federal law claims will require separate and wholly unrelated factual and legal inquiries. The state claims are independent to the federal claim, and there is no justification for the state law claims to be tried in this Court.

Accordingly, the Court should decline to exercise "supplemental" jurisdiction over Plaintiff's state law claims and dismiss such claims.

CONCLUSION

Defendants respectfully request that this Honorable Court dismiss Count 3 of the Complaint without leave to replead, and dispose of the remainder of Plaintiff's Complaint for lack of subject matter or "supplemental" jurisdiction, and for any other relief the Court deems proper.

Respectfully submitted,

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Sania Teymeny and Visionary Vehicles, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a bona fide effort has been or will be made to resolve or minimize the issues and a true and correct copy of the Defendants' Response to Plaintiff's Memorandum in Opposition to Motion to Dismiss, was faxed/mailed/emailed this 28 day of November, 2007 to: Charles Lee, Esq , 245 Park Ave. New York, New York, 10167, Stephen Jacobs, Esq., Attorney for Defendant Scott Gildea 120 Broadway, 27th Floor, New York, NY 10271. 29

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